

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 143 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1-5 No

WILLIAM BETHAL

Versus

LADHABHAI K PATEL - DECD.THRO'HEIR-SUBASHCHANDRA LADHABHAI&2

Appearance:

MR YN RAVANI for Petitioner

MR BP MUNSHI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 21/08/98

ORAL JUDGEMENT

Heard learned counsel for the parties. This is a tenant's Revision Application against the order dated 8.10.1997 passed by the Assistant Judge, Jamnagar in Civil Regular Appeal No. 89 of 1986 decreeing the plaintiff's suit for possession. The petitioner defendant has been found defaulter in payment of rent. The learned appellate court has found the petitioner tenant not entitled to claim protection under Section 12(1)(b) of the Bombay Rents Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as the 'Bombay Rent Act'). It is contended by the learned counsel that the appellate court has misread the

statement of the petitioner inasmuch as he has construed certain parts of the statement as admission to the effect that notice Exh. 18 was received by him. I have gone through the statement of the petitioner. I have also read the plaint and the written statement. Para 4 of the plaint it is stated that the notice under Section 12(1)(b) was given on 4.5.1982. In para 9 of the written statement there is no denial in terms of the receipt of the said notice dated 4.5.1982. Certain plea has been raised as to whether the said notice gives cause of action or as to whether the same is in accordance with law? The fact remains that there is no denial in clear terms of the receipt of the said notice. In the statement he has also stated that no notice was received except the notice which does not bear the signature of the plaintiff. He also admitted that the original notice was with his lawyer. Thus, in my view there is no misreading of the statement. There is a tacit admission of the defendant-petitioner that he had received the notice. In view of this, I find no substance in the contention raised by the petitioner.

It is next contended by the learned counsel that the learned appellate judge committed an error in decreeing the suit on the ground of arrears of rent without noticing the fact that the rent amount was deposited in advance and as such there was no violation of Section 12(3)(b) of the Act during the pendency of the proceedings. The first appellate court analysing the payment of rent has stated that the tenant has deposited rent for three times one in the year 1986 and second in the year 1990 and third in the year 1997 which clearly shows that the respondent tenant has not regularly deposited the due rent even after the standard rent was fixed by the trial court. In view of this, the appellate court held that the tenant is not entitled to claim protection under Section 12(3)(b) of the Act. Mr. Ravani, learned counsel has referred to a decision of this court in the case of SOMABHAI KALIDAS PATEL VS. BACHUBHAI SANKALCHAND MODI reported in 1986 GLH (U.J.) 22 wherein it is held that if the tenant has paid the rent before the judgement in appeal, the requirement of the Section is complied with. It may be noticed that an amendment was brought in Section 12(3)(b) in the year 1985. The present case is prior to 1985. The Division Bench of this court in the case of SAKARBAI DEVRAJ VS. IBRAHIM reported in 1994(2) G.L.R. 1091 has taken the view that the amendment is prospective. In view of the judgement of the Division Bench the second contention raised by the petitioner also does not survive.

In view of the aforesaid I find no merit in this

revision application and the same is accordingly rejected. Mr Ravani learned counsel appearing for the petitioner says that the petitioner is having kidney problem and is suffering from serious ailment. Considering all facts and circumstances of the case, the petitioner is permitted to vacate the premises on or before 31.1.1999 on usual terms and conditions. The petitioner will furnish an undertaking within a period of two weeks that he will vacate the suit premises on or before 31.1.1999 and he will also continue to pay the rent till then and if there is arrears due the same shall be paid/deposited.

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